

The SLC 2000 is the current state-of-the-art equipment and provides numerous features that enhance and improve service to consumers. It also is the most cost-effective and efficient equipment readily available on the market today. Indeed, U S WEST uses SLC 2000's in its network today. The superior monitoring capability of the SLC 2000 improves service quality and facilitates improved individual customer care. Moreover, the SLC 2000 when properly collocated, allows ACSI to economically serve customers with fewer than ten lines. If the SLC 2000 is not properly collocated, ACSI can only market its facilities-based services to customers requiring more than ten lines, which excludes many small businesses and virtually all residential customers from choosing ACSI service as an alternative to the incumbent carrier. In essence, when the SLC 2000 is not configured properly, it operates in a manner akin to the previous generation equipment, *i.e.*, the SLC 96.

23. When ACSI first informed U S WEST it would seek to collocate SLC 2000s, U S WEST approved the equipment for collocation. U S WEST did not indicate this would create any compatibility problems. However, it has become clear that U S WEST is unwilling to provide adequate or reasonable interconnection with the SLC 2000 equipment, seriously undermining the utility of the equipment and ACSI's ability to offer competitive local exchange services in New Mexico.

24. A SLC 2000 (also known as TR-303 subscriber loop carrier) can accommodate 768 DS1 lines, each serving 24 loops on a fully channelized basis. ACSI numbers these lines consecutively, from 1 to 768. It has deployed successfully the SLC 2000 in this manner with

numerous other ILECs, including Bell Atlantic, BellSouth, GTE and Southwestern Bell. Only with U S WEST have problems arisen.

25. Specifically, during the testing previously described, U S WEST informed ACSI that the last four numbers in every 100 ports of ACSI's SLC 2000 under the numbering scheme ACSI uses are not recognized by U S WEST (*e.g.*, 97 to 100, 197 to 200, etc.). U S WEST stated that it stencils its collocation equipment consecutively, numbers 1 through 96, before continuing with 101 to 196, 201 to 296, and so forth. This is a result of the network systems U S WEST uses that maintain the numbering conventions of the earlier SLC 96-dominated network. U S WEST told ACSI that no guarantee could be made that the correct U S WEST ports connect to the corresponding ACSI ports if ACSI uses its numbering scheme.

26. During testing of loop cutovers, on repeated occasions, U S WEST proved incapable of connecting the corresponding parts on the collocated ACSI and U S WEST equipment, leading to failed cutovers.

27. Several possible solutions for this apparent problem have been raised by ACSI. The first proposal was for U S WEST to renumber the SLC 2000 ports after number 96 (a SLC 2000 has 768 ports; the SLC 96 has 96 ports). Port number 97 would be translated as 101, 98 would be 102, and so on. ACSI proceeded to explore this option, but tests on this method of numbering conversion proved disastrous due to U S WEST's failures in implementation. ACSI determined that U S WEST's success rate in translating the U S WEST system to the SLC 2000 system was less than 50

percent. This is utterly unacceptable for ACSI's customers, who would experience an intolerable level of disconnects during cutovers.

28. The second workaround proposed by ACSI was for ACSI to assign port numbers that U S WEST could easily translate into its own system. ACSI provided data to U S WEST such that U S WEST could determine which ACSI port corresponded with each loop terminating on the U S WEST distribution frame. However, U S WEST was either unable or unwilling to implement this solution for reasons unclear to ACSI.

29. A third, and very inferior, solution ACSI proposed was to lease SLC 96 ports from U S WEST. Under this proposal U S WEST would install SLC 96s itself in its end office on ACSI's behalf. ACSI would not need to put in collocation equipment, but would transport the loops from the U S WEST SLC 96 to an existing ACSI collocation in another U S WEST end office where it would go over ACSI's network. This proposal was put forth merely as a stop-gap solution, as it would not allow ACSI to get into the market providing facilities-based local exchange service utilizing unbundled loops.

30. Since that time, ACSI has had periodic calls with U S WEST and others regarding this issue. Despite ACSI's persistence and its efforts to convince U S WEST to adopt one of ACSI's proposals described earlier, U S WEST has neither responded nor provided an alternative of its own that would permit ACSI to collocate the SLC 2000 without seriously compromising the advantages of the equipment. Without the successful collocation of the SLC 2000 equipment, ACSI

has been unable to offer service to large portions of the Albuquerque market, namely customers with one to nine lines.

C. U S WEST Has Undermined ACSI Efforts To Provide Competitive Service

31. Because of U S WEST's failure to accommodate installation and full operation of the SLC 2000, ACSI is unable to serve customers on a facilities basis who require fewer than seven lines. As a result, one of the principal means of competition in the provision of local exchange services is being denied ACSI in U S WEST territory. Instead, ACSI may serve such customers only through resale of U S WEST's retail services or if the end user is served by ACSI's own fiber facilities. Additionally, ACSI may serve customers with nine or more lines through a DS1 "private line" connection between the customer's premises and ACSI's switch provided by U S WEST or a third party provider, or an equivalent wireless connection obtained from a provider of 38 GHz short haul services. ACSI calls such DS1 connections "Type II."

32. In addition to its refusal to allow use of ACSI's SLC 2000, U S WEST has acted to undermine ACSI's efforts to provide competitive services to end users. This has resulted in problems relative to number portability and interconnection, causing disruption of service to U S WEST customers that have signed up with ACSI for which service has not yet been cutover.

33. By disconnecting end users before they have been cutover to ACSI, U S WEST has turned off these customers' phone service for hours at a time, often causing substantial business losses. ACSI, once apprised of such a situation by U S WEST *after the disconnection has commenced*, has been forced to work diligently to ensure U S WEST corrects the problem for U S

WEST's own customer, albeit a future customer of ACSI. However, the responsibility for these problems lies squarely with U S WEST.

34. This problem has manifested itself in two ways: cessation of service or commencement of number porting in advance of the confirmed date. Until late last year, when ACSI received a request for service from an existing U S WEST customer — *and* the customer was going to access the ACSI network via a U S WEST-provided DS1 — ACSI would proceed to order the facility and obtain a firm order confirmation date ("FOC"). The FOC would be the date on which U S WEST would "turn up" the DS1 facility and disconnect service to its existing customer, as that customer transferred over to ACSI.

35. If the customer switching to ACSI wishes to retain its U S WEST number, it could do so through number portability. In its simplest and, to date, most common form, number portability involves the forwarding of a call made to the U S WEST number by the U S WEST end office formerly serving the end user. The U S WEST switch, instead of completing the call, would forward it to the ACSI switch for routing and delivery. The U S WEST end office switch accomplishes this by translating the U S WEST number to an ACSI-provided number in a manner transparent to the caller and called party. Where the new ACSI subscriber chooses to retain its U S WEST number, ACSI would order number portability at the same time it ordered the connection to the ACSI switch, and the two would be scheduled to occur simultaneously on the FOC date.

36. Alternatively, if ACSI intended to serve the new customer using its own facilities, *i.e.*, not using the U S WEST end office switch and the customer sought to retain its U S WEST

numbers, then ACSI would set a FOC for number portability and the discontinuance of U S WEST service to the customer. In such cases, ACSI would set the FOC for a date when it expected to have the customer's access to the ACSI switch operational.

37. When proceeding to establish the new customer's service via a U S WEST-provided DS1 arrangement, ACSI must first test the installed arrangement before commencing service to the customer. Unfortunately, U S WEST often lets ACSI know the DS1 will not be turned up on time only one or two days in advance. This gives ACSI a minimal amount of time to change the order and the FOC and, apparently, makes it that much more difficult for U S WEST to coordinate the new FOC. It also provides the customer with little notice of the delay, which the customer may blame on the "new carrier," *i.e.*, ACSI.

38. ACSI submits that within *48 hours after the order is placed*, U S WEST should be able to assess if the DS1 can be installed on time, *not 48 hours before the facility is to be installed*.

39. Not surprisingly, in light of the foregoing, the majority of the problems occurred on an "original" FOC that had been changed only one or two days in advance. For example, new customers have been suddenly and unexpectedly disconnected or have partially lost U S WEST service because although ACSI changed the order and/or confirmed the new FOC in advance of the original FOC, U S WEST proceeded to initiate the cutover, either by disconnecting the customer or porting the number to the ACSI switch, or both on the original FOC.

40. Disconnects of this variety have occurred on several occasions in New Mexico. These disconnects have lasted typically for a few hours, but may affect multiple lines for a customer.

On at least one occasion, a single ACSI customer has experienced multiple disconnects when the FOC was changed more than once.

41. A number of factors make these occurrences particularly egregious. In addition to porting the numbers and/or discontinuing service early (*i.e.*, after ACSI confirmed the FOC, U S WEST makes no attempt to confirm that ACSI's number corresponding to the ported number is operational. In addition, U S WEST does not let ACSI or the customer know in advance. To add insult to injury, U S WEST has even blamed "ACSI service" in response to their customers' inquiries. The apparent cause, however, is U S WEST's failure to coordinate internally the scheduling or rescheduling of a FOC or supplemental FOC among all the U S WEST work groups involved.

42. Following several such occurrences in New Mexico and Arizona, counsel for ACSI and U S WEST over several weeks in the fall of 1997 discussed how such breakdowns could be handled more appropriately and resolved more efficiently in the future. In these meetings, U S WEST took full responsibility for those occasions in which it began to port numbers or disconnected service prior to the FOC. U S WEST, acknowledging the damage this could cause a new competitor such as ACSI, agreed to write a letter of apology to any customer to whom this occurred, exonerating ACSI. Unfortunately, U S WEST has not followed this promised practice with any consistency.

43. Rather than continue to be plagued by these repeated failures of U S WEST to coordinate cutovers to ACSI, ACSI has jury-rigged a process to minimize the potential this will happen in the future. It is an unacceptable solution, however, even in the short run, because it

actually introduces delays in ACSI's provision of service to new customers. In particular, to avoid these disconnects, ACSI will *first* install and test the Type II facility before ordering and establishing a FOC with U S WEST for the cutover. While this has worked reasonably well in overcoming the original problems caused by U S WEST, in the broader, more relevant sense, it is totally unsatisfactory because it introduces a substantial delay in the provision of service after the Type II connection is operational.

44. Also, because ACSI must wait until the DS1 is installed and tested, for example, it cannot schedule the installers to complete service turn-up at the time of cutover in advance. In many cases, it can be difficult to schedule installers on short notice. At any rate, short-notice scheduling is typically more costly. These delays are also more costly because ACSI must pay for the U S WEST DS1 for a period without receiving offsetting end-user revenues from local exchange services.

45. Such delays have a true competitive impact because many customers may not be willing to tolerate the extended delay and uncertainty. (U S WEST will not put in the DS1 for ACSI while ACSI has the customer.) Indeed, ACSI's "fix" makes it look to the prospective customer as though ACSI's ability to bring on a new customer is uncoordinated and inept, when in reality it is seeking to compensate for U S WEST's failures.

CLAIMS FOR RELIEF

CLAIM ONE

U S WEST HAS FAILED TO PROVIDE ACSI WITH INTERCONNECTION AS REQUIRED BY THE 1996 ACT

46. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

47. Section 251(c)(2) of the 1996 Act requires U S WEST to provide interconnection for ACSI's facilities and equipment with U S WEST's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within U S WEST's network that is at least equal in quality to that provided by U S WEST to itself *and* on rates, terms, and conditions that are just, reasonable, and nondiscriminatory *and* in accordance with the terms and conditions of the Interconnection Agreement between the parties.

48. U S WEST has refused or failed to provide interconnection for ACSI's facilities and equipment with U S WEST's network as provided for in Section 251(c)(2).

49. The terms and conditions under which U S WEST will provide ACSI interconnection are neither just nor reasonable.

50. Such terms and conditions are discriminatory.

51. Such terms and conditions are not in accordance with the parties' Interconnection Agreement.

52. U S WEST's refusal and failure are in violation of Section 251(c)(2) of the 1996 Act, have impeded competition in U S WEST's New Mexico service territory, and have harmed ACSI's customers and New Mexico consumers.

CLAIM TWO

U S WEST HAS FAILED TO PROVIDE ACSI WITH UNBUNDLED NETWORK ELEMENTS AS REQUIRED BY THE 1996 ACT

53. ACSI incorporates herein by reference thereto paragraphs 1 to 52 of this Complaint as though fully set forth in this paragraph.

54. Section 251(c)(3) of the 1996 Act requires incumbent LECs to make available to any requesting telecommunications carrier for the provision of a telecommunications service nondiscriminatory access to UNEs any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory and in accordance with the terms and conditions of the parties' Interconnection Agreement. 47 U.S.C. § 251(c)(3).

55. U S WEST has refused or failed to provide access to ACSI to UNEs on terms and conditions that are just, reasonable, and nondiscriminatory, or are in accordance with the Interconnection Agreement.

56. U S WEST's refusal and failure are in violation of Section 251(c)(3) of the Act, have impeded competition in U S WEST's New Mexico service territory, and have harmed ACSI's customers and New Mexico consumers.

CLAIM THREE

U S WEST HAS FAILED TO PROVIDE ACSI WITH COLLOCATION AS REQUIRED BY THE 1996 ACT

57. ACSI incorporates herein by reference thereto paragraphs 1 to 56 of this Complaint as though fully set forth in this paragraph.

58. Section 251(c)(6) of the 1996 Act requires ILECs to provide for physical or, under certain conditions, virtual collocation of equipment necessary for interconnection of access to UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

59. ACSI has sought virtual collocation of equipment necessary for interconnection and for access to UNEs U S WEST end offices.

60. U S WEST has refused or failed to provide ACSI with virtual collocation of equipment necessary for interconnection or access to UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

61. U S WEST's refusal and failure are in violation of Section 251(c)(6) of the Act, have impeded competition in U S WEST's New Mexico service territory, and have harmed ACSI's customers and New Mexico consumers.

CLAIM FOUR

U S WEST HAS FAILED TO PROVIDE ACSI WITH NUMBER PORTABILITY AS REQUIRED BY THE 1996 ACT

62. ACSI incorporates by reference thereto paragraphs 1 to 61 of this Complaint as though fully set forth in this paragraph.

63. Pursuant to section 251(b)(2) of the 1996 Act and 47 C.F.R. §52.23(a)(6) and (7), ILECs, such as U S WEST, are required to provide CLECs, such as ACSI, with number portability in a manner which does not result in any degradation of service quality or network reliability when it is implemented or when a customer switches service.

64. ACSI has sought number portability from U S WEST.

65. U S WEST's failure to provide number portability, and/or the manner in which U S WEST has provided number portability, has violated the 1996 Act and its implementing regulations as well as the interconnection Agreement.

CLAIM FIVE

U S WEST HAS DISCRIMINATED AGAINST ACSI IN VIOLATION OF NEW MEXICO LAW

66. ACSI incorporates herein by reference thereto paragraphs 1 to 65 of this Complaint as though fully set forth in this paragraph.

67. U S WEST has discriminated against ACSI in failing to provide Interconnection Services and UNEs in violation of New Mexico law and the New Mexico Constitution.

68. U S WEST's violation has impeded competition in U S WEST's New Mexico service territory and has harmed ACSI's customers and New Mexico consumers.

CLAIM SIX

U S WEST HAS VIOLATED THE ORDER OF THIS COMMISSION APPROVING THE INTERCONNECTION AGREEMENT

69. ACSI incorporates herein by reference thereto paragraphs 1 to 68 of this Complaint as though fully set forth in this paragraph.

70. U S WEST has failed to provide Interconnection Services and UNEs with ACSI as provided for under this Commission's Findings of Fact, Conclusions of Law and Order in Docket No. 96-307-TC, which approved an Interconnection Agreement between U S WEST and ACSI, finding the terms of the Interconnection Agreement complied with and were consistent with the 1996 Act and applicable FCC interconnection rules — all in violation of New Mexico law and the New Mexico Constitution.

71. U S WEST's violation has impeded competition in U S WEST's New Mexico service territory and has harmed ACSI's customers and New Mexico consumers.

CLAIM SEVEN

U S WEST HAS VIOLATED NEW MEXICO LAW AND COMMISSION RULES REQUIRING INTERCONNECTION

72. ACSI incorporates herein by reference thereto paragraphs 1 to 71 of this Complaint as though fully set forth in this paragraph.

73. U S WEST's actions violating New Mexico law and Commission Rules are anticompetitive, prevent the development of competition in telecommunications services in New Mexico, and deprive New Mexico consumers access to a competitive market for telecommunications services.

CLAIM EIGHT

U S WEST HAS FAILED TO PROVIDE JUST, REASONABLE, ADEQUATE AND SUFFICIENT INTERCONNECTION SERVICES

74. ACSI incorporates herein by reference thereto paragraphs 1 to 73 of this Complaint as though fully set forth in this paragraph.

75. U S WEST's provision of Interconnection Services and UNEs are unjust, unreasonable, inadequate and insufficient in violation of New Mexico law and the New Mexico Constitution.

76. U S WEST's violation has impeded competition in U S WEST's New Mexico service territory and has harmed ACSI's customers and New Mexico consumers.

CLAIM NINE

U S WEST HAS FAILED TO PROVIDE INTERCONNECTION, COLLOCATION, UNBUNDLED NETWORK ELEMENTS, AND NUMBER PORTABILITY TO ACSI IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ACSI/U S WEST INTERCONNECTION AGREEMENT

77. ACSI incorporates herein by reference hereto paragraphs 1 to 76 of this Complaint as though fully set forth in this paragraph.

78. The Interconnection Agreement sets forth terms and conditions under which ACSI is to order and U S WEST is to provide collocation services for access to UNEs interconnection and number portability.

79. U S WEST has refused or failed to provide collocation, interconnection, UNEs and number portability to ACSI in accordance with the terms and conditions in the parties' Interconnection Agreement.

80. U S WEST's refusal and failure are a violation of the parties' Interconnection Agreement. These violations have impeded competition in U S WEST's New Mexico service territory and have harmed ACSI's customers and New Mexico consumers.

Prayer for Relief

WHEREFORE, ACSI requests that the Commission issue an Order:

1. Finding U S WEST's behavior described herein constitutes (i) a failure to provide interconnection in accordance with Section 251(c)(2); (ii) a failure to provide access to unbundled loops in accordance with Section 251(c)(3); (iii) a failure to provide collocation in accordance with Section 251(c)(6); (iv) a failure to provide number portability in accordance with Section 251(b)(2) of the 1996 Act; (v) a failure to provide nondiscriminatory, adequate, sufficient and reasonable telecommunications services in violation of State law; (vi) a violation of the Commission's order approving the parties Interconnection Agreement; and (vii) a violation of the parties' Interconnection Agreement.

2. Immediately directing U S WEST to provide just, reasonable, nondiscriminatory, adequate and sufficient Interconnection services, collocation, unbundled network elements and number portability to ACSI.

3. Immediately directing U S WEST to comply with the Interconnection Agreement, including installing collocation of SLC 2000 equipment as requested by ACSI and provisioning of unbundled loops and number portability in accordance with the Interconnection Agreement;

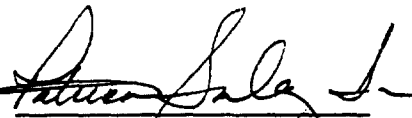
4. Immediately directing U S WEST, in its arrangements with ACSI, to comply with the ordering intervals and other performance standards set forth in the operational support systems proposals of the Local Competition Users Group ("LCUG") and Association of Local Telecommunications Services (copies attached hereto as Exhibit A);

5. Granting such other relief as the Commission deems just and proper.

March 17, 1998.

Respectfully submitted,

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